been judicially recognized that a manufacturing district must submit to annoyances which would be enjoined in a residential neighborhood.[13] And the converse of the proposition is often decided though seldom clearly expressed. In addition, an offensive odor seems to be a nuisance *per se,* its effect on the health of the community being immaterial. It is difficult to grasp the logical difference between this form of nuisance and an architectural monstrosity that is an eye-sore to surrounding residents. The practical consideration that seems to determine the stand of the courts is, that the first, the nasal, sense is universal. No expert testimony is necessary, and no conflict of testimony is likely. The artistic sense, on the other hand, is localized in a comparatively few of the esthetically cultivated, among whom also there are apt to be essentially divergent views as to what constitutes good taste.

Unfortunately the very material aspect of the question has not been stressed. The man who opens up a laundry in a residential section may outrage the refined sensibilities of his neighbors. In so far the result is merely sentimental and properly disregarded by the law. But very often the value of property in the vicinity is considerably lowered. The exercise of certain rights of ownership by one party may reprive a hundred others from using their property in a normal manner. The use of one property for manufacturing purposes may preclude the use of adjacent property for any but the same purpose.

The present attitude of the courts leaves much to be desired. But it is definite. An alternative view would unsettle the property rights of the community. In an extreme case, for example, it was sought to prohibit the erection of residences near a drive-way which skirted the shore of a bay, because they obstructed the view to the bay and the breezes therefrom.[14] The merits of such a controversy cannot be decided by the courts, nor indeed by the executive of legislative departments under our conception of government. Another philosophy of government which has emphasized the paramount importance of the state has enabled the continental authorities to achieve a standard of municipal development which is the envy of American cities. It is a curious paradox, that at this time when the collective sense is stronger than ever before in America, paternalism in government is under a ban, and individual freedom is deemed the special jewel of Anglo-Saxon jurisprudence.

B. W.

INTERNATIONAL LAW—CONTRABAND—CONFISCATION OF VESSEL CARRYING CONTRABAND—In the light of the present war conditions, the problem of the penalty to vessels of neutrals for the car-

[13] Sullivan v. Steel Company, 208 Pa. 543 (1904).

[14] Quintine v. Bay St. Louis, 64 Miss. 483 (1886).

riage of contraband to a belligerent, assumes a position deserving of especial consideration.

The doctrine that commerce in contraband is free to citizens of a neutral State in so far as that State is concerned while to the belligerent who is injured is left the right to confiscate the commodities in question, if they can be captured, was early announced in this country.[1] And the present administration has affirmed it time and again. The question as to when that right exists is, of course, dependent upon the rules of so-called International Law, as interpreted by the courts of the one or the other belligerent as the case may be. Since the difficulties can only arise when a state of war exists, and wars being comparatively infrequent, tribunals have not been on so safe a ground as in other matters usually brought before them for judicial decision; nor can the psychological effect of the fact that the respondent vessel was intended to aid the enemies of their country be discounted.[2] So that the question has rather been the subject of diplomatic agreements as exemplified by treaties,[3] or conferences between the representatives of the various powers.

As late as in 1908 such a gathering was held in London, to which each of the powers was invited to submit a proposal for regulating the problem. It resulted in the issuance of the "Declaration of London."[4] While this was not accepted in whole by any of the powers, certain sections, notably Article 40, to be discussed later, were definitely adopted by England and her allies and tentatively by most civilized states.

It is first important to determine just what contraband, in this sense, includes. In general it may be said to mean not only articles such as arms, ammunition and other objects of immediate use in war, but also many others which, though ordinary commerce in times of peace, become contraband in war times, when the destination of such articles indicate that they are intended for the use of the military or naval forces of the enemy.[5] As early as the sixteenth century warring powers began to deny the right of contract between neutral nations and their enemies, free from their inter-

[1] Am. State Papers, For. Rel. I, 147 (1793); *Id.*, I, 646 (1796).

[2] "The truth is that the feeling of the country was deep and strong against England, and the judges as individual citizens were no exception to that feeling, besides the court was not then familiar with the law of blockade." Excerpt from a letter from Mr. Justice Nelson (U. S. Supreme Court) to Mr. Lawrence. Quoted in Hall "International Law," p. 666.

[3] United States and France. De Martens, Rec. VII, 104 (1800); United States and Central America Now. Rec. VI, 34 (1828).

[4] Signed February 26, 1909. Ratification advised by Senate, April 24, 1912.

[5] Fenwicke "Neutrality Laws of the United States," page 104, and see the classification under "Declaration of London."

ference. Warnings were issued, threatening the seizure of certain commodities on their way to enemy ports. Hence the name "contraband" as being *contra* to the ban or edict.[6]

At this time there existed two distinct schools, each entertaining well set principles as to the right of condemnation and confiscation. At the head of one stood France,[7] while England championed the other.[8] The British plan included besides goods absolutely contraband, a list of so-called "Conditional Contraband." Goods of this class, when captured, were not confiscated, but the taker paid the owner thereof due value and also all freight charges. This proceeding was called "pre-emption." [9] On the other hand the French stoutly denied the exercise of this right, but maintained the doctrine of strict accountability of the neutral. Necessarily many articles, included in the English conditional lists, were held as absolute contraband by the advocates of this school. Both agreed, however, that any belligerent might add to the list by warnings issued before seizure.[10] In view of the determination of both factions it is easy to see that no agreement might be proposed suitable to both. In 1907 at the "Convention at the Hague," in spite of proposals, and counter proposals, the representatives were obdurate and the question was passed over. In 1908 at the London Conference, *infra,* the novel scheme of setting down certain articles, not contraband, was adopted, but nothing further was accomplished.

Turning now to the liability of the carrier. The present status of the law as exemplified by the recent case of the *Hakan* [11] is a development of three successive stages. Before the Napoleonic wars the prevalence of opinion was that neutral vessels carrying contrabands of war were just as subject to capture and condemnation as were the goods themselves,[12] the theory being that the guilt of him who makes possible the performance of the contract of sale, *i. e.,* the carrier, was just as great as the seller. Since the latter upon capture lost his goods, the former should suffer a like fate.

The second stage was represented by the so-called "Indulgent Rule" adopted in the American case of the *Bermuda,*[13] requiring for the confiscation of the vessel bad faith on the part of the owner thereof.[14] This view is explained on the ground that the owner

[6] The first use of the word in this context was in the Treaty of Southhampton between England and the United Provinces (1625). Twiss "War," page 121.

[7] Dumont, t. 6, part 2, p. 266.

[8] Treaty of Southampton. See note 6, *supra.*

[9] Admiralty Manual, Art. 64.

[10] Life and Correspondence of Sir Leoline Jenkins, v. 2, p. 751.

[11] 115 L. T. R. 389 (Eng. 1916).

[12] The *Neutralitet,* 3 Ch. Rob. 295 (Eng. 1801).

[13] 3 Wall. 514 (U. S. 1865).

[14] Such as concealment of papers, change of destination or a part ownership of both cargo and vessel.

of the vessel does not necessarily know the character of the cargo and therefore should not be compelled to suffer, having done no affirmative wrong. However, since the defense is based in knowledge, proof of it to the owner destroys the immunity and the vessel again becomes subject to seizure.

As said before Article 40 of the London Declaration, *supra,* has been accepted by most states. It represents the transition to the third stage and provides for the confiscation of the vessel, if one-half the goods carried, in value, weight, volume or freight is contraband. Under it the *Hakan, supra,* is decided. The defense raised was that the old American idea of *mala fides* in the owner prevailed, and that Article 40, and its adoption by Orders in Council was *contra* to International Law and invalid, but the court, citing the proposition of the United States, at the London Convention [15] as expressive of the change of sentiment, adopted the rule of Article 40 as controlling and firmly settled it as being the law with its stamp of judicial approval.

P. F. N.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—AWARD ON HEARSAY EVIDENCE—Many of the Workmen's Compensation Acts of this country provide that the administrators of the Act, Industrial Commissions, *etc.,* are not to be bound by the formalities of legal procedure in passing on the merits of cases arising under the Act, and some even specifically point out that the Commission or Referee may disregard the common law and statutory rules of evidence and procedure other than those presented in the Workmen's Compensation Act itself. The purpose of such enactments is, of course, that the utmost freedom shall be allowed in the investigation of a claimant's right to compensation, to the end that relief may be granted in worthy cases as speedily as possible. Under such statutory directions the question of the admissibility of hearsay evidence in proceedings under the Compensation Acts is of considerable importance. In a former note [1] it was pointed out that in nearly all jurisdictions the findings of fact of the administrative body, hereafter called the Commission, are final and not subject to review by the courts. It will be seen from that note that in general the Commission must act within its powers in making an award, that it has no right to act on mere supposition, guess work or conjecture, nor can it base an award on legally incompetent evidence; and that it is generally agreed that the mere

[15] The proposals of the United States to the conference are embodied in the Naval Code of 1900 with the Amendment of 1903. They were prepared by Rear-Admiral Stockton, U. S. N., under the guidance of the Secretary of State, and endorsed by the President.

[1] 64 UNIV. OF PENNA. L. REV. 744, May, 1916.